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Supreme Court, U.S.
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No. 96-62

In The Supreme Court Of The United States

OCTOBER TERM 1995

JOSEPH J. VOYTEK,

Petitioner,

v.

UNIVERSITY OF CALIFORNIA and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Respondents.

Petition for Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner worked for The Regents of the University of California ("The Regents") at the University of California at Berkeley ("UCB") campus for several years when he lobbied for and obtained a substantial promotion, including an $11,000 raise, completely restructured responsibilities, and an upper-level management designation. (Petitioner's Appendix ["PA"]:2.) Although petitioner assisted in drafting the job description, almost immediately, he fell behind in his work and began receiving criticism from his supervisor. (PA:2-3.)

Independent of the new job and unknown to The Regents at that time, petitioner had suffered in the past episodes of a condition known as major depression. (PA:6, n. 3.)

Unfortunately, the stress related to being over his head in a job for which he was not qualified and could not handle, led petitioner and his own doctors to conclude that if he did not remove himself from the work place, he might suffer a relapse of major depression. (PA:5-7.) During the entire period in issue, petitioner never in fact suffered major depression.

After a year and one-half in the new management level position, petitioner filed a workers' compensation claim asserting stress from the job and an irreconcilable personality clash with his supervisor precluded him from returning to his job. (PA:5-10.)

Petitioner was examined by a trained, licensed psychiatrist who agreed with petitioner that he could not return to his job, primarily because he could

not work with his supervisor, and further because he could not handle the management-level responsibilities. (PA:Id.)

Petitioner was offered a job transfer to a comparable position with a new supervisor. Plaintiff declined the offer (PA:12-17.) Petitioner was also afforded, at considerable University expense, vocational rehabilitation services including job training and guidance with skills in interviewing. Through those efforts, petitioner ultimately landed a job with the United States government in a non-management position, earning approximately the same salary as he had been earning at UCB.

Petitioner contended below that The Regents should have accommodated him under the Rehabilitation Act. On summary judgment, the district court found the

University had accommodated petitioner through the substantial vocational rehabilitation efforts and, through offering petitioner a comparable position. The court also found undisputed evidence that the petitioner was not qualified to perform the job in question because of his irreconcilable personality conflict with the supervisor and because he lacked the requisite management skills to perform the essential functions of the job. (PA:3, 31, 33-38.) Each of these findings are well-documented by the trial court and serve as the basis for affirmance by the Ninth Circuit. (See, generally, PA:1-60.)

REASONS FOR DENIAL OF THE WRIT

This case presents none of the circumstances listed in this Court's Rule

10, which the rule suggests guides the exercise of this court's discretion in granting review.

The decision below is an unpublished decision by the Ninth Circuit, affirming an unpublished District Court opinion. Neither decision is in conflict with any other Ninth Circuit decision or any other circuit or district court decision.

The issue decided at the district court and affirmed by the Ninth Circuit was simply that, on the evidence presented, both in favor of and in opposition to summary judgment, petitioner failed to establish disputed issues of material fact with regard to (1) whether plaintiff was "otherwise qualified" for the management-level position; and (2) whether the University had reasonably accommodated his mental

condition. The district court's 46-page opinion carefully detailed why there was no disputed issues of material fact with regard to either of these issues and why The Regents was entitled to judgment as a matter of law. The Ninth Circuit simply affirmed the propriety of the district court's ruling.

The decision sought for review is thus simply one in which both courts correctly exercised their authority under rule 56 of the Federal Rules of Civil Procedure governing summary judgment. There was no unique rule of law construed and both courts properly cited and relied upon the ample Ninth Circuit precedent on disability discrimination. There is no purpose served by accepting this petition. (Braxton v. U.S. (1991) 500 U.S. 344 [114 L.Ed.2d 585].)

Petitioner briefs the issue now suggesting the trial court should somehow not have relied on the competent, admissible expert evidence of a private licensed psychiatrist on a material fact issue. This "issue" is contrary to the generally known rules governing evidence and use of expert testimony and certainly does not warrant review by this court. In any event, there was no evidence presented below that the expert opinions were inappropriate, without foundation or not credible. To the contrary, the expert was neutral and based his opinion on generally accepted scientific and psychiatric findings, and was entirely credible. (PA:39-40.)

Petitioner also asks this Court to review whether the Americans with Disabilities Act ("ADA") applies to positions the petitioner applied for

while on stress leave. Review should not be granted because the district court correctly found that petitioner's ADA cause of action accrued before the application of the ADA, and that the continuing violations doctrine did not apply on the facts presented. Equally important, because the district court found the standards governing the disability issues in question under either the Rehabilitation Act or the ADA were substantially the same, any ADA claim was equally without merit and properly subject to dismissal by summary judgment. (PA:44-45.)

CONCLUSION

For the reasons stated above, Respondent respectfully prays that the petition be denied.

Dated: 7-19-96

By: _____

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